



December 6, 2000

Ms. Stacy J. Anderson
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2000-4606

Dear Ms. Anderson:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 141883.

The City of College Station Police Department (the "department") received a request for "any and all copies of memorandums, documents, reports, etc. which were generated as a direct result of Bureau Meetings" for the period beginning January 1, 2000, and ending the date the request was received. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code is designed to protect law enforcement interests. *See* Open Records Decision No. 252 (1980). As you raise section 552.108 without reference to a specific subsection, we construe your argument to include all pertinent subsections. Section 552.108(b) is relevant to the subject information. This office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibits a pattern that reveals investigative techniques, information is excepted under section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted).

When section 552.108(b) is claimed, the governmental body claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 2-3 (1986). Whether disclosure of particular records will interfere with crime prevention must be decided on a case-by-case basis. Attorney General Opinion MW-381.

Thus, to claim 552.108(b), a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision Nos. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known. Here, you state only that "some of the topics discussed in the memoranda guideline the policies of the police department and, if released, could place individuals at an advantage in confrontations with police officers." You do not indicate what portion of the responsive information you seek to withhold under this exception. Nor do you explain how the release of any of the responsive information would interfere with law enforcement and this is not apparent on the face of the submitted information. We conclude that you have not demonstrated that any of the responsive information may be withheld under section 552.108.

Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. Open Records Decision No. 613 (1993); *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (personnel communications not relating to agency's policymaking not excepted from public disclosure pursuant to section 552.111). An agency's policymaking functions do include, however, administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 (1995). In addition, section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615.

From our review of the submitted information, we find that it consists of internal administrative or personnel matters, and does not reflect the policymaking function of the department. We conclude that no responsive information may be withheld under section 552.111 of the Government Code.

As no exception to disclosure has been shown to apply to the responsive information, it must be released to this requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

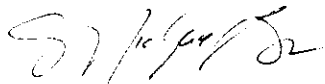
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 141883

Encl: Submitted documents

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